

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRANDEN ROBINSON,
Plaintiff,

v.

ALAMEDA COUNTY, et al.,
Defendants.

Case No. 18-cv-06814-HSG (PR)

**ORDER OF PARTIAL SERVICE AND
PARTIAL DISMISSAL**

INTRODUCTION

On November 9, 2019, plaintiff, an inmate at San Quentin State Prison, filed this *pro se* civil rights action under 42 U.S.C. § 1983 against staff at the Santa Rita County Jail, where he was previously housed as a pretrial detainee. Plaintiff names as defendants Deputy A. Jackson, Alameda County Sheriff G. Ahern, and Alameda County. The Court now conducts an initial review of the complaint pursuant to 28 U.S.C. § 1915A. Plaintiff is granted leave to proceed *in forma pauperis* by separate order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the statement need only “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the grounds of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim for relief that is plausible on its face.” *Id.* at 1974.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims

1. Defendant A. Jackson

The complaint alleges that on April 22, 2018, defendant A. Jackson instructed plaintiff to go to the “multi” room for a strip search. Dkt. No. 1 at 3. Once plaintiff was naked, Jackson accused plaintiff of having something in his mouth and began choking plaintiff and ordering him to “spit it out.” *Id.* As plaintiff was explaining that he did not have anything, Jackson ordered plaintiff to place his hands behind his back. Jackson then handcuffed plaintiff and resumed choking him with both hands. Plaintiff felt that he was about to pass out from shortness of breath and spun himself out of the choke. Jackson then pushed plaintiff into the edge of the door frame face first and “choke-slammed” plaintiff from behind onto his shoulder. *Id.* Plaintiff suffered a dislocated shoulder.

The Due Process Clause of the Fourteenth Amendment protects a pretrial detainee from the use of force that amounts to punishment. *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989) (citing *Bell v. Wolfish*, 441 U.S. 520, 535-39 (1979)). Liberally construed, the allegations that

deputy Jackson choked, pushed, and slammed plaintiff to the floor state a cognizable claim against deputy Jackson for excessive force in violation of plaintiff's right to due process.

2. Defendants G. Ahern and Alameda County

The complaint contains no allegations against defendants G. Ahern and Alameda County. Plaintiff appears to be suing Sheriff Ahern in his supervisory capacity. Under no circumstances is there respondeat superior liability under Section 1983; or, in layman's terms, under no circumstances is there liability under Section 1983 solely because one is responsible for the actions or omissions of another. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Under section 1983, liability may be imposed on an individual defendant only if the plaintiff can show that the defendant proximately caused the deprivation of a federally protected right. *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). A supervisor may be liable under § 1983 only upon a showing of (1) personal involvement in the constitutional deprivation or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. *See Redman v. Cty. of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991), *abrogated on other grounds by Farmer v. Brennan*, 511 U.S. 825 (1994). Plaintiff has not made any such allegations.

Similarly, Alameda County, a municipal entity, also cannot be held liable on a respondeat superior theory, or on the theory that it is responsible for the actions of its employees. *See Monell v. Dep't of Social Servs.*, 436 U.S. 658, 691 (1978) (holding municipalities cannot be held liable under Section 1983 based upon respondeat superior theory). However, local governments, such as Alameda County, are "persons" subject to liability under 42 U.S.C. § 1983 where official policy or custom causes a constitutional tort, *see Monell*, 436 U.S. at 690. To impose municipal liability under Section 1983 for a violation of constitutional rights, a plaintiff must show: (1) that the plaintiff possessed a constitutional right of which he or she was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's constitutional rights; and (4) that the policy is the moving force behind the constitutional violation. *See Plumeau v. School Dist. #40 County of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997). Plaintiff has not made any such allegations.

Accordingly, plaintiff's claims against Sheriff Ahern and Alameda County are

DISMISSED without prejudice. If plaintiff can correct the identified deficiencies, in good faith, he may file a motion for leave to amend his complaint.

CONCLUSION

1. The complaint, liberally construed, states a cognizable § 1983 claim against Alameda County Deputy A. Jackson. The Clerk shall terminate defendants G. Ahern and Alameda County from the docket in this action.

2. The Clerk shall issue summons and the United States Marshal shall serve, without prepayment of fees, the summons, a copy of the complaint, all attachments thereto, and a copy of this Order on **Deputy A. Jackson** at the **Santa Rita County Jail**. The Clerk shall also mail a courtesy copy of this Order to the Office of the Alameda County Counsel.

3. In order to expedite the resolution of this case, the Court orders as follows:

a. No later than **91 days** from the date this order is filed, defendant must file and serve a motion for summary judgment or other dispositive motion, or a motion to stay as indicated above. A motion for summary judgment also must be accompanied by a *Rand* notice so that plaintiff will have fair, timely, and adequate notice of what is required of him in order to oppose the motion. *Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012) (notice requirement set out in *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), must be served concurrently with motion for summary judgment).¹

If defendant is of the opinion that this case cannot be resolved by summary judgment, defendant must so inform the Court prior to the date the motion is due.

b. Plaintiff's opposition to the summary judgment or other dispositive motion must be filed with the Court and served upon defendant no later than **28 days** from the date the motion is filed. Plaintiff must bear in mind the notice and warning regarding summary judgment provided later in this order as he prepares his opposition to any motion for summary judgment.

¹ If defendant asserts that plaintiff failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a), defendant must raise such argument in a motion for summary judgment, pursuant to the Ninth Circuit's opinion in *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014) (en banc) (overruling *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003), which held that failure to exhaust available administrative remedies under the Prison Litigation Reform Act, should be raised by a defendant as an unenumerated Rule 12(b) motion).

1 Plaintiff also must bear in mind the notice and warning regarding motions to dismiss for non-
2 exhaustion provided later in this order as he prepares his opposition to any motion to dismiss.

3 c. Defendant **shall** file a reply brief no later than **14 days** after the date the
4 opposition is filed. The motion shall be deemed submitted as of the date the reply brief is due. No
5 hearing will be held on the motion.

6 4. Plaintiff is advised that a motion for summary judgment under Rule 56 of the Federal
7 Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you must do in
8 order to oppose a motion for summary judgment. Generally, summary judgment must be granted
9 when there is no genuine issue of material fact – that is, if there is no real dispute about any fact
10 that would affect the result of your case, the party who asked for summary judgment is entitled to
11 judgment as a matter of law, which will end your case. When a party you are suing makes a
12 motion for summary judgment that is properly supported by declarations (or other sworn
13 testimony), you cannot simply rely on what your complaint says. Instead, you must set out
14 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,
15 as provided in Rule 56(c), that contradict the facts shown in the defendant’s declarations and
16 documents and show that there is a genuine issue of material fact for trial. If you do not submit
17 your own evidence in opposition, summary judgment, if appropriate, may be entered against you.
18 If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand v.*
19 *Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App. A).

20 (The *Rand* notice above does not excuse defendant’s obligation to serve said notice again
21 concurrently with a motion for summary judgment. *Woods*, 684 F.3d at 939).

22 5. All communications by plaintiff with the Court must be served on defendant’s counsel
23 by mailing a true copy of the document to defendant’s counsel. The Court may disregard any
24 document which a party files but fails to send a copy of to his opponent. Until a defendant’s
25 counsel has been designated, plaintiff may mail a true copy of the document directly to defendant,
26 but once a defendant is represented by counsel, all documents must be mailed to counsel rather
27 than directly to that defendant.

28 6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No

1 further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required
2 before the parties may conduct discovery.


3 7. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the Court
4 informed of any change of address and must comply with the Court's orders in a timely fashion.
5 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
6 Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every
7 pending case every time he is moved to a new facility.

8 8. Any motion for an extension of time must be filed no later than the deadline sought to
9 be extended and must be accompanied by a showing of good cause.

10 9. Plaintiff is cautioned that he must include the case name and case number for this case
11 on any document he submits to the Court for consideration in this case.

12 **IT IS SO ORDERED.**

13 Dated: 1/29/2019

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16 HAYWOOD S. GILLIAM, JR.
17 United States District Judge
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